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7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 Center for Biological Diversity,
11 Plaintiff,

12 v.

13 U.S. Environmental Protection Agency,
14 Defendant.
15

CV-25-00341-TUC-RM

**JOINT CASE MANAGEMENT
REPORT**

16 The parties, by and through undersigned counsel, hereby submit their Joint Case
17 Management Report as follows:

18 Proposed deadlines for:

- 19 **a. Initial disclosures:** Not expected at this time.
20 **b. Addition of parties or amending pleadings:** Not expected at this time.
21 **c. Disclosure of expert testimony and rebuttal expert testimony:** Not
22 expected at this time.
23 **d. Completion of discovery:**

24 To date, no discovery has been taken by any party. The parties agree that
25 discovery should be stayed pending Defendant United States
26 Environmental Protection Agency's filing of its motion for summary
27 judgment and supporting *Vaughn* declaration or indices. Plaintiff Center
28

for Biological Diversity reserves the right to seek discovery pursuant Federal Rule of Civil Procedure 56(f) after the government files its motion for summary judgment and supporting *Vaughn* declarations or indices. Defendant contends that discovery is generally not appropriate in FOIA actions. *See Lane v. Dep't of Interior*, 523 F.3d 1128, 1134 (9th Cir. 2008) (stating that in FOIA “cases courts may allow the government to move for summary judgment before the plaintiff conducts discovery”); *see also Minier v. Central Intelligence Agency*, 88 F.3d 796, 803 (9th Cir. 1996) (noting that discovery does not apply); *Hardy v. U.S. Dept. of Defense*, No. CV-99-523-TUC-FRZ, 2001 WL 34354945, *4 (“Discovery is to be sparingly granted in FOIA actions”) (quoting *Public Citizen Health Research Group v. FDA*, 997 F. Supp. 56, 72 (D. D.C. 1998) (“*Public Citizen*”), *aff'd in part and rev'd in part on other grounds*, 185 F.3d 898 (D.C. Cir. 1999)). Defendant further contends that discovery is permitted only if and when the agency’s “affidavits create genuine issues as to the thoroughness of the government search for documents” or whether a disclosure exemption applies. *Western Ctr for Journalism v. Internal Revenue Service*, 116 F. Supp. 2d 1, 8 (D. D.C. 2000) (quoting *Weisberg v. Dept. of Justice*, 705 F.2d 1344 (D.C. Cir. 1983));

e. Filing dispositive motions:

Summary judgment is how nearly all FOIA cases are resolved. *See Lane*, 523 F.3d at 1134 (9th Cir. 2008). This is because the cases involve the legal question of applying FOIA’s disclosure exemptions to particular records. *Id.* It is the agency’s burden to justify its actions with respect to a plaintiff’s request, which is done by affidavit. *See* 5 U.S.C. § 552(a)(4)(B) (allowing the use of affidavits); *Lane*, 523 F.3d at 1135-36 (discussing the use of affidavits).

Parties agreed that this matter will likely be resolved at summary judgment. However, because EPA is still in the process of responding to Plaintiff's request, and because the parties may be able to resolve the matter without briefing, it is premature to set the schedule at this time. The parties have met and conferred regarding EPA's planned schedule for completion of its response to Plaintiff's request, and Plaintiff has indicated EPA's proposed schedule is acceptable at this time.

f. Filing joint settlement status reports: The parties agree to file joint status reports every 60 days regarding the status of the case.

g. Filing joint proposed pretrial order: Not applicable at this time because parties anticipate this case will likely be resolved through summary judgment motions.

RESPECTFULLY SUBMITTED this 25th day of August 2025.

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District of Arizona

s/ Michael L. Linton
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Attorney for Defendant

CENTER FOR BIOLOGICAL
DIVERSITY

s/ Jeremiah Scanlan
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CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmitted a Notice of Electronic Filing to the following:

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s/ L. Startup
Joint Case Mgmt. Plan